



16239

RECORDATION NO. FILED 1425

March 13, 1989 MAR 17 1989 - 11 05 AM

## Itel Rail Corporation

55 Francisco Street  
San Francisco, California 94133  
(415) 984-4000  
(415) 781-1035 Fax

9-076A011

## INTERSTATE COMMERCE COMMISSION

Hon. Noreta R. McGee  
Secretary  
Interstate Commerce Commission  
Washington, DC 204233/17/89  
13.

Re: Amendment No. 1 to Schedule No. 2 to Lease Agreement dated November 18, 1986, between Itel Railcar Corporation, as assignee of Evans Railcar Leasing Company, and Mueller Brass Company (Lease attached)

Dear Ms. McGee:

On behalf of Itel Rail Corporation, the above instrument, in three (3) counterparts, is hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the \$13 recordation fee.

Please record this Amendment under a new recordation number.

The parties to the aforementioned instrument are listed below:

Itel Railcar Corporation (Lessor)  
55 Francisco Street  
San Francisco, California 94133

Mueller Brass Company (Lessee)  
1925 LaPeer Avenue  
Port Huron, Michigan 48060

This Amendment covers three (3) 52'5", RBL boxcars bearing reporting marks USLX 19048-19050.

Please return to the undersigned the stamped counterparts not required for filing purposes, together with the ICC fee receipt and acknowledgment letter.

Very truly yours,

Patricia Schumacker  
Legal DepartmentMAR 17 11 43 AM '89  
MOTOR OPERATING UNIT

MAR 17 1989 - 11 05 AM

LOT 2125-02

INTERSTATE COMMERCE COMMISSION  
AMENDMENT NO. 1 TO SCHEDULE 2

THIS AMENDMENT NO. 1 (the "Amendment") to Schedule 2 dated November 18, 1986, ("Schedule 2") to that certain Evans Short Term Railcar Lease Agreement dated November 18, 1986, (the "Lease") between Evans Railcar Leasing Company ("Evans") and MUELLER BRASS COMPANY ("Lessee"), is made as of this 8th day of March, 1989, by and between ITEL RAILCAR CORPORATION ("Lessor"), as assignee of Evans, and Lessee.

R E C I T A L S:

- A. By letter dated September 1, 1988, Lessee provided official 30-day notice to terminate the Lease with respect to the twelve (12), 52'5", RBL railcars bearing nonsequential reporting marks from within the series USLX 14010-19058 that are described in Schedule 2.
- B. Lessee has requested the return of three (3) of the railcars described in Schedule 2.

Now, therefore, Lessor and Lessee agree to amend Schedule 2 as follows:

- 1. All terms defined in the Lease shall have their defined meanings when used in this Amendment No. 1.
- 2. This Amendment shall become effective on the date it is fully executed by both parties.
- 3. The number of Cars described in Schedule 2 shall be reduced from "12" to "3".
- 4. The reporting marks and numbers of the Cars described in Schedule 2 shall be changed from "USLX 14010; 19048-19058" to "USLX 19048-50". ✓
- 5. The Lease Term shall be deleted and replaced by: "One (1) year from the date that Amendment No. 1 to Schedule 2 is fully executed, continuing from month to month thereafter through the close of business on March 31, 1992. Either party may cancel the Lease with respect to the Cars described in Schedule 2 at any time during the extension by providing thirty (30) days' prior written notice to the other."
- 6. Special Terms shall be amended by deleting the word "None" and adding the following:


"Lessee shall, at all times while the Agreement is in effect, at its own expense, cause to be carried and maintained: (i) all-risk, physical loss and damage insurance with respect to the Cars while the Cars are on Lessee's property or in Lessee's care, custody or control; and (ii) public liability insurance with respect to third party personal injury and property damage, in each case in such amounts and for such risks and with

such insurance companies as are satisfactory to Lessor. All insurance policies shall be taken out in the name of Lessee and shall name Lessor, any financing party designated by Lessor by written notice to Lessee ("Financing Party"), and any assignee of Lessor as additional named insureds and as loss-payees. Said policies shall provide that Lessor, Financing Party and any assignee of Lessor shall receive thirty (30) days' prior written notice of any material changes in coverage or cancellation thereof. In the event that Lessee fails to place insurance, or that said insurance expires, Lessor has the right to purchase the insurance described above and Lessee shall pay the cost thereof. With respect to the additional insureds, Lessee's insurance policies shall be primary to any other valid and available insurance ("Other Insurance") effected by, or for, the additional insureds. Lessee shall require its insurer specifically to waive subrogation, claim and recovery with respect to any Other Insurance. Any and all deductibles in the described policies shall be paid by Lessee.


Each policy obtained by Lessee pursuant to this Section shall be in accordance with the above terms and conditions, which terms and conditions shall be set forth on the Certificate of Insurance provided to Lessor pursuant to this paragraph. Lessee shall furnish to Lessor concurrently with execution hereof, within thirty (30) days of receipt of a written request from Lessor and at intervals of not more than twelve (12) calendar months from execution hereof, Certificates of Insurance evidencing the aforesaid insurance."

7. This Amendment shall supersede the aforementioned letter dated September 1, 1988.
8. This Amendment may be executed by the parties hereto in any number of counterparts and all said counterparts taken together shall be deemed to constitute one and the same instrument.

ITEL RAILCAR CORPORATION

By:   
 Title: President  
 Date: 3/8/89

MUELLER BRASS COMPANY

By:   
 Title: DIRECTOR CORP. TRAFFIC  
 Date: 3/2/89

STATE OF CALIFORNIA       )  
                                      ) ss:  
COUNTY OF SAN FRANCISCO )

On this 8th day of March, 1989, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of Itel Railcar Corporation, that the foregoing Amendment No. 1 to Schedule 2 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Sharon L. Van Fossan  
Notary Public



STATE OF Michigan )  
                                      ) ss:  
COUNTY OF St. Clair )

On this 2 day of March, 1989, before me personally appeared Eugene D. Smith, to me personally known, who being by me duly sworn says that such person is Air Corp Traffic of Mueller Brass Company that the foregoing Amendment No. 1 to Schedule 2 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

June L. Moore  
Notary Public

JUNE L. MOORE  
Notary Public, St. Clair Co., Mich.  
My commission expires March 26, 1990

## EVANS SHORT TERM RAILCAR LEASE AGREEMENT

AGREEMENT made and entered into this 18th day of November, 1986, between EVANS RAILCAR LEASING COMPANY, an Illinois corporation (hereinafter called "Evans") and MUELLER BRASS COMPANY, a(n) Michigan Corporation corporation, with its principal place of business at 1925 LaPier Avenue, Port Huron, MI 48060, (hereinafter called "Lessee").

### RECITALS

Lessee desires to lease from Evans as Lessor certain railroad cars, hereinafter specifically designated, all upon the rentals, terms and conditions set forth in this Railcar Lease Agreement and the Schedules from time to time made a part hereof (together hereinafter referred to as the "Lease").

### AGREEMENT

It is agreed:

1. Lease of Cars. Evans agrees to lease to Lessee and Lessee agrees to and does hereby lease from Evans, railroad cars of the number of units, model, type, construction and such other description (hereinafter referred to as the "Cars"), as is set forth in any Schedule hereto. All Schedules shall be in the form of Schedule 2 hereto, shall contain such other terms and provisions as Evans and Lessee may agree upon and shall, if requested by either party, have the signatures thereto acknowledged by a notary public. The terms and provisions of the Schedule shall control over any inconsistent or contrary terms and provisions in the body of this Lease.

2. Delivery and Acceptance of Cars. Evans shall deliver the Cars as promptly as is reasonably possible. Delivery shall be F.O.T. the point specified in the applicable Schedule. From and after acceptance of a Car, Lessee shall be liable for, and shall pay or reimburse Evans for the payment of all costs, charges and expenses of any kind whatsoever on account of or relating to transportation of a Car.

All Cars delivered under this Lease shall be in satisfactory condition for movement in the normal interchange of rail traffic and shall otherwise comply with the description and specifications contained in the applicable Schedule; but Lessee shall be solely responsible for determining that Cars are in proper condition for shipment and use. At Evans' request, Lessee shall deliver to Evans an executed Certificate of Acceptance in the form of Exhibit A with respect to all Cars.

3. Use and Possession. Throughout the continuance of this Lease so long as Lessee is not in default hereunder, Lessee shall be entitled to possession of each Car from and after delivery of such Car and shall use such Car on its own property or lines or in the usual interchange of traffic; provided, however, that Lessee agrees that Cars shall at all times be used (i) in conformity with all Interchange Rules; (ii) only

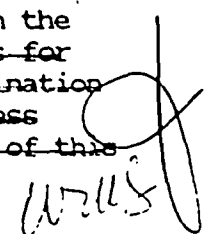
within the continental limits of the United States of America or in temporary or incidental use in Canada; and (iii) in such service as will not constitute a train hauling predominantly a single commodity, such as coal or grain, between the same points on a regular basis, commonly referred to as a "unit train".

4. Sublease. Lessee shall have no right to assign or sublease or loan the Cars without the prior written consent of Evans; provided, however, that Lessee shall have the right to sublease any of the Cars for single trips within the continental limits of the United States to its customers or suppliers where the sole purpose of such sublease is to obtain exemption from demurrage on the subleased Cars. Any such sublease shall be upon terms which are in compliance with all applicable Interchange Rules, tariffs, regulations and laws and all terms and conditions of this Lease.

5. Term. This Lease shall be effective as to any Car on the date of delivery by Evans of such Car, as provided in Paragraph 2 hereof. However, the lease term with respect to all Cars covered by a particular Schedule shall be deemed to commence on the Average Date of Delivery of the Cars covered by such Schedule and shall terminate upon expiration of the period specified in such Schedule unless sooner terminated in accordance with the provisions of this Lease. Average Date of Delivery shall be defined as that date which is determined by (i) multiplying the number of Cars delivered by Evans on each day by the number of days elapsed between such day and date of delivery of the first Car under the applicable Schedule, and (ii) adding all of the products so obtained and dividing that sum by the total number of Cars delivered under the applicable Schedule, and (iii) adding such quotient rounded out to the nearest whole number to the date of delivery of the first Car under the applicable Schedule. The date on which delivery of a Car shall be deemed to have been made will be the day following delivery of the Car to the Lessee. A Car shall be conclusively deemed delivered to the Lessee on the earliest date shown on any of the following: (i) Certificate of Acceptance or other writing accepting a Car signed by the Lessee; or (ii) a bill of lading showing delivery to Lessee or to a railroad for the account of Lessee.

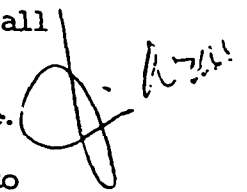
6. Rental. Rental shall include but not be limited to all mileage, straight car hire, and incentive car hire earnings payable to Lessee or Evans on account of such car. Mileage credits shall be at the rate established by the applicable mileage rate allowance published in PHJ tariff 6007 series (ICC PHJ 6007, Item 195 and/or 621) supplements thereto or successive issues thereof. All such earnings as previously defined shall be for the account of Evans.

7. Mileage Credits. Since the Cars bear Evans' reporting marks and numbers, any time and mileage payments paid or allowed by railroads on the Cars shall be the property of Evans. ~~Lessee agrees to reimburse Evans for all sums paid to any person or railroad either prior to or after termination of this lease under applicable railroad tariffs on account of all excess empty mileage incurred by reason of movements of Cars during the term of this lease.~~



8. Title. Lessee shall not by reason of this Lease or any action taken hereunder acquire or have any right or title in the Cars except the rights herein expressly granted to it as Lessee.

9. Maintenance Repair Evans shall be responsible for the maintenance and repair of the Cars. Lessee shall be responsible for and shall pay all costs and expenses of all Repair work or other work or materials required by reason of damage or other conditions caused by Lessee's negligence; or misuse in loading, unloading or use other than as permitted under applicable Schedules. Lessee shall notify Evans in writing of any maintenance or repair work that is required and shall arrange for maintenance or repair pursuant to the instructions of Evans.

10. Taxes. Evans shall be liable at all times for and shall pay all Federal, State or other governmental property taxes assessed or levied against the Cars. ~~Lessee shall be liable for all Sales, use or gross receipts taxes imposed upon the equipment during the term of this lease.~~ 

11. Substitution of Cars. Evans may, at any time and from time to time, replace any Casualty Cars, defined as Cars lost, stolen, destroyed or damaged beyond economic repair with Replacement Cars, defined as Cars of substantially similar description and specification to that set forth in the applicable Schedule, which shall be deemed to be subject to all terms and conditions of this Lease.

12. Indemnity. Lessee agrees to indemnify Evans and hold it harmless from and against any loss, expense or liability which Evans may suffer or incur from any charge, claim, proceeding, suit or other event which in any manner or from any cause arises in connection with the use, possession, or operation of a Car while subject to this Agreement, excepting only such loss, expense or liability which arises solely from Evans' negligence.

13. Lettering. At Evans' election, all Cars may be marked to indicate the rights of Evans or any assignee, mortgagee, trustee, pledgee, or security holder of Evans or a lessor to Evans.

14. Termination. This Lease shall terminate upon expiration of its term, at election of either party hereto by reason of the default or breach of the other party in the terms hereof, or upon the election of Evans as hereinafter provided. In the event that average monthly rentals received for all Cars in any calendar quarter as defined in Paragraph 6 are less than the Minimum Average Monthly Rental Per Car as specified in the applicable Schedule, or if Evans incurs any unreimbursed costs, expense or reclaim against mileage allowance, which is not specifically contemplated herein, on account of the movement of Cars during the term of this Lease, whether by reason of ExParte 346-8 (Deregulation of Boxcars) or any other tariff, ruling, regulation, order or amendment, then Evans may at its option upon thirty (30) days notice to Lessee terminate this Lease with respect to any or all Cars subject to this Lease or any Schedules. This Lease may be terminated as to all Cars or as to any group of Cars covered by a Schedule without termination of the Lease as to Cars covered by any other Schedule. From and after termination of this Lease with respect to any Car and until its return to Evans all amounts earned by such Car shall be paid to Evans as defined in Paragraph 7, "Mileage Credits".

15. Return of Cars. Upon the expiration or termination of this Lease with respect to any Car, Lessee shall at its sole cost and expense forthwith surrender possession of such Car to Evans by delivering same to Evans at such repair shop, storage or terminal facility as Evans may designate by notice to Lessee. Each Car so surrendered shall be in the same or as good condition, order and repair as when delivered to Lessee, and shall be free from all accumulations or deposits from commodities transported in or on the Cars while in the service of Lessee. (In particular, tank cars shall be returned to Evans with the interior cleaned in a manner which will allow immediate use of such tank cars free from the risk of contamination to cargo subsequently carried therein.) If any of the Cars do not bear Evans' reporting marks and numbers, Lessee shall place such reporting marks and numbers on any or all of the Cars as Evans shall designate in writing to Lessee prior to the end of the lease term. Until the delivery of possession to Evans pursuant to this Paragraph 15, Lessee shall continue to be liable for and shall pay rental at the rate being paid immediately prior to termination or expiration, and Lessee shall in addition make all other payments and keep all obligations and undertakings required of Lessee under any and all provisions of this Lease as though such termination or expiration had not occurred. Nothing in this Paragraph 15 shall give the Lessee the right to retain possession of any Car after expiration or termination of this Lease with respect to such Car.

16. Loss, Theft or Destruction of Cars. In the event any Car is lost, stolen, destroyed or damaged beyond economic repair, Lessee shall, within five days of its knowledge thereof, by written notice, fully advise Evans of such occurrence. Lessee shall upon request of Evans, assist Evans in obtaining payment with respect to such loss, theft, damage, or destruction, but Lessee shall not be liable for such loss, theft, damage, or destruction unless caused by its negligence or misuse.

17. Assignment. This Agreement may not be assigned by Lessee without the express written consent of Evans. All rights of Evans under this Agreement may be assigned, pledged, or mortgaged, transferred or otherwise disposed of either in whole or in part without notice to or consent of Lessee.

18. Liens. Lessee shall keep the cars free from any and all encumbrances or liens in favor of anyone claiming by, through, or under Lessee which may be a cloud upon or otherwise affect Evans' title, and Lessee shall promptly discharge any such lien, encumbrance or legal process.

19. Notice. Any notice required or permitted to be given pursuant to the terms of this Agreement shall be properly given when made in writing, deposited in the United States mail, registered or certified, postage prepaid, addressed to

Evans at: 2550 Golf Road  
Rolling Meadows, IL 60008

Lessee at: 1925 LaP<sup>e</sup>r Avenue  
Port Huron, MI 48060

or such other addresses as Evans or Lessee may from time to time designate.



20. Governing Law. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Illinois. The terms of this Agreement and the rights and obligations of the parties hereto may be changed by writing executed by both parties.

21. Benefit. This Agreement shall be binding upon and shall inure to the benefit of the parties, their successors and assigns.

IN WITNESS WHEREOF, Evans and Lessee have duly executed this Lease as of the day and year first above written.

(CORPORATE SEAL)

ATTEST:

By: \_\_\_\_\_

Secretary

MUELLER BRASS COMPANY

By: \_\_\_\_\_

President

(CORPORATE SEAL)

ATTEST:

By: \_\_\_\_\_

Laurence P. Prange  
Assistant Secretary

EVANS RAILCAR LEASING COMPANY

By: \_\_\_\_\_

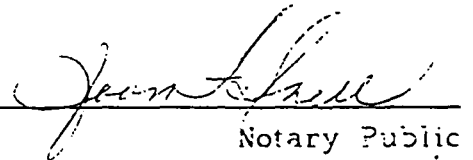
William M. Sheehan  
Vice President Marketing

STATE OF MISSISSIPPI

COUNTY OF ITAWAMBA

On this the 9th day of December, 1986, before me personally appeared J. A. Staples, to me personally known, who being by me duly sworn, says that he is Vice President of Mueller Brass Co., and that he, as such Vice President, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

  
Notary Public

NOTARY PUBLIC, JOAN F. SHELL  
ITAWAMBA COUNTY, MISS.  
My Commission Expires Nov. 24, 1988

STATE OF ILLINOIS  
COUNTY OF COOK

On this 22<sup>d</sup> day of July, 19 87, before me personally appeared Wm M. Decker, to me personally known, who being by me duly sworn, says that he is Vice President of EVANS RAILCAR LEASING COMPANY, and Laurence P. Prange personally known to me to be the Asst Secretary of said corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

Janette C. Linnette  
My Commission Expires July 25, 1987.

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, says that he is \_\_\_\_\_ President of \_\_\_\_\_, and \_\_\_\_\_ personally known to me to be the \_\_\_\_\_ Secretary of said corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

Lot: 2125-02

SCHEDULE 2

Page 1 of Schedule 2 dated November 18, 1986 to Lease dated November 18, 1986 by and between EVANS RAILCAR LEASING COMPANY ("Evans") and MUELLER BRASS COMPANY ("Lessee").

TYPE AND DESCRIPTION OF CAR:

Used 52"5" 70-ton RBL boxcars

NUMBER OF CARS:

12

INTERIOR EQUIPMENT:

Dual air pak bulkheads/modified

SPECIAL LININGS:

None

PERMITTED LADING USE:

Copper tubing

REPORTING MARKS AND NUMBERS:

USLX 14010; 19048-19058

SPECIFICATIONS DESIGNATED BY LESSEE:

None

INITIAL F.O.T. POINT:

Fulton, Mississippi

Page 2 of Schedule 2 dated November 18, 1986 to Lease dated November 18, 1986 by and between EVANS RAILCAR LEASING COMPANY ("Evans") and MUELLER BRASS COMPANY ("Lessee").

LEASE TERM: One (1) year commencing upon delivery continuing month to month thereafter unless cancelled upon thirty (30) days prior written notice by either party.

MONTHLY RENTAL: 100% mileage earnings to the account of Evans.

MINIMUM RENTAL: \$175 per car, per month, average

SPECIAL TERMS: None

(CORPORATE SEAL)

ATTEST:

By: 

Laurence P. Prange  
Secretary

MUELLER BRASS COMPANY

By: 

William M. Sheehan  
President

(CORPORATE SEAL)

ATTEST:

By: 

Laurence P. Prange  
Assistant Secretary

EVANS RAILCAR LEASING COMPANY

By: 

William M. Sheehan  
Vice President Marketing